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SWRCB Clerk

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100

RE: *Comment Letter – 07/06/11 Board Workshop: NPDES Fee Structure*

Dear Ms. Townsend:

AES Southland (AES-SL) appreciates the opportunity to provide comments to the State Water Resources Control Board in advance of the July 6, 2011, Board Workshop on the NPDES Fee Structure. First and foremost, AES-SL wishes to acknowledge and praise the work of the SWRCB staff, namely Darrin Polhemus, David Ceccarelli, Miles Burnett, and Glen Osterhage. They have worked tirelessly with the NPDES Working Group and have done so in a professional and responsive way. Their positive attitudes have gone a long way towards making a difficult task bearable and an enjoyable process. We are confident that we speak for others in wishing to thank them and highlight this to the SWRCB Board Members for the proper recognition.

AES-SL owns the Redondo Beach, Alamitos and Huntington Beach generating stations, which together have over 3,900 MWs of installed capacity and 12 individual generating units. The facilities are located in the Los Angeles basin Local Capacity Requirement (LCR) area and represent approximately 18% of Southern California Edison's peak demand. AES-SL has separate NPDES Permits to cover each of its three (3) generating stations and has a substantial interest in the outcome of the NPDES Fee Structure per facility as any fee increases are then threefold for our company.

Following the adoption of the NDPES Fee Structure in 2008-2009, AES-SL and other steam electric power plants (SEPPs) were disproportionally financially impacted by the new structure. AES-SL had to pay an unbudgeted **442 percent increase** in the permit fees for its facilities while many permit holders enjoyed an **82 percent reduction** at a time when the fee program needed to increase its revenue collection by 35 percent. While the fees have decreased some, we believe that the fees are still disproportionate, unfair and should be altered for 2011-2012 and beyond.

Guiding Principles

In 2009, the SWRCB in adopting the NPDES Fee Structure for 2009-2010 instructed the staff to create a NPDES Fee Stakeholder Workgroup (Workgroup) that would review and provide recommendations on a new fee structure. As its first order of business in December 2009, the Workgroup drafted and later agreed upon a set of Guiding Principles on March 15, 2010, that it would rely upon in the process. These guiding principles were provided to the SWRCB Board in its Report and Recommendations on July 6, 2010:

1. Widely fluctuating annual fees for NPDES dischargers are undesirable because of the difficulty in budgeting and raising revenues.
2. The Workgroup will utilize the State Water Board's 2010-2011 revenue requirement projections as the target for the Workgroup's product and will not review in detail the assumptions driving the projections or their appropriateness at this time. (This is independent of any advocacy positions taken by workgroup members outside of this group regarding the budget.)
3. The Workgroup does not support or expect that fees a specific discharger pays will be exactly proportional to the effort spent by the State Water Board staff on that discharger.
4. The goal of the Workgroup is to develop a methodology that is a fair and stable allocation of the current and near term future revenue requirements.
5. A "stable allocation method" means that the fees a discharger pays will not have wide swings from year-to-year.
6. The Workgroup will strive to have its recommendations developed by June 2010 in order to allow them to be implemented for FY 10/11, with the understanding that the final revenue target may change depending upon the adopted State budget.
7. The Workgroup recognizes that there are a few basic discharger types for which approximate broad allocations of the revenue requirement can be stated.
8. The Workgroup will establish a fair and stable methodology for determining the approximate share of the fee revenue to be derived from each of the basic discharger types.
9. Fees should not be a primary mechanism to promote or discourage policy.

The Workgroup explored and debated a variety of methodologies and each one was measured against the Guiding Principles the group unanimously agreed upon. The basic tenets of the Guiding Principles were fairness to all permit holders and relative certainty about permit fees in the future. Having agreement on these tenets early on was critical because at that point, no one knew where the methodologies would take us and what the dollar impacts would be. The Workgroup was in agreement as to the Sector Methodology (as outlined below) without dollar impacts because it met ALL of our Guiding Principles, but once dollar figures were put in, some members no longer agreed. AES-SL knows well that rate increases are difficult to shoulder but members of the group could support the shifting in fee structure because it was fair, objective, and sustainable. They could go back to their members or boards and link this fee structure to objective criteria with the knowledge that if adopted, there would not be wild swings for NPDES Permit Fees for the foreseeable future as had been the case in the last few years.

Sector Approach

The Workgroup members, except for a subset of the Industrial Sector agreed upon the Sector Approach by June 2010. The Sector Approach utilized the 2001 Statewide Needs Analysis Matrix (Matrix) for the NPDES Program created by the SWRCB staff as the basis for its Sector Approach. There were four groups within the Sector Approach namely the Municipals (publicly owned and domestic treatment works), Industrials, SEPPs, and Generals with further delineations within each sector. The matrix identified 42 tasks performed by the State and Regional Water Boards in implementing the NPDES program. These tasks included permit issuance, inspections, sampling, enforcement and threat complexity to name a few. Each sector was given a percentage that they were responsible based upon this matrix and could then determine among its sector members how to further allocate that revenue target. All of the sectors, except the Industrial Sector representatives developed a methodology and presented it to the Workgroup. Three out of Four Sectors agreed to this methodology. The Workgroup continued to meet and negotiate from June through August and a subsidy was offered to the Industrial Sector to reach agreement but it was not accepted. A presentation was made by the Workgroup to the SWRCB Board on August 3, 2010, as to the progress but no further progress was reached with this subset and a unanimous approach was not finalized when the SWRCB adopted the 2010-2011 NPDES Fee Structure on October 19, 2010.

2011-2012 Fee Structure Proposals

Undaunted by the lack of unanimity last year, the Workgroup continued to meet in 2011 to try and develop a proposal to put forward to the SWRCB Board. The SWRCB prepared a great summary of the Workgroup efforts to date in their Staff Report published on June 16th in preparation for the July 6th Board Workshop. These comments will explain why Scenario 2 is the only option that ensures sustainability and equity and respectfully request that the SWRCB adopt this Fee Structure for 2011 and beyond.

Scenario 2 is the only scenario that meets all of the Guiding Principles as agreed upon by the Workgroup members. Scenarios 1, 3 and 4 are all flow based calculations and rely on the remaining 17 SEPP units for a huge percentage of the revenue collection. The 17 power plants will contribute nearly 30% of the revenue for the program while the remaining 1500 plus permit holders will provide the remaining amount. While this is disproportionate to actual cost of administration, it is also not sustainable and therefore does not meet the Guiding Principles. The SWRCB adopted its Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling in 2010 that will either force the retirement of the SEPP units (which will equal $0 payment for NPDES fees) or will require a reduction of 93% of the actual flows (current fees are based on design flow and capped). Those units that achieve the reductions through reduced flow or through repowering will be in the Industrial Sector and based upon flow, pay an amount roughly equal to or less than the amount that would be paid under Scenario 2 today. Given the example of the Long Beach Generating Station that has been repowered, the NPDES Permit Fee was approximately $141,160 (handout from NPDES staff on 1-20-10) for 2009-2010 and now that it has been repowered and eliminated once through cooling, its 2011-2012 estimated fee is $10,408 (handout from SWRCB staff dated 3-11-11). What is important to note is that nothing has changed with respect to administering the NPDES program and regulating the Long Beach Generating Station that would justify the difference in fee costs. The inherent costs of this program bear no relationship to the flow of the permit holders.

Since the adoption of last year's fee structure, two (2) SEPPs have closed and therefore will not be paying any fees into the program leaving a loss of $620,000 (South Bay and Potrero Power Plants) out of the gate. That leaves only seventeen (17) SEPPs this year and each year, more and more will either close or comply with the OTC Policy through decreasing flows further decreasing the permit fees associated. Based upon the Matrix that the Sector Approach was created from, SWRCB has been clear that reducing the number of permit holders will not result in a dramatic reduction in workload and that the NPDES program is already understaffed by nearly 50%. The decrease in revenue from the SEPPs each year will result in shifting nearly 30% of the revenue collected to other sectors over the next few years. This does not give the certainty that is at the core of the Guiding Principles and makes budgeting for the permit fees very difficult each year for the permit holders.

Scenario 2 bases the amount paid by each permit holder on the 42 delineated tasks and results in the SEPPs paying roughly 5% of the NPDES Program. The initial Matrix determination showed that SEPPs should be 2%, but through negotiations and staff modifications, the amount agreed to was 5%. As each unit complies with the OTC Policy, the associated revenue reduction per SEPP is no longer over $300,000 but is closer to $62,200. It is a fair fee for the SEPPs to pay based on the Matrix and rightly puts the focus of their investment into new technology that no longer uses once through cooling. It also gives the revenue certainty needed for the NPDES Fee Program because unless a SEPP retires, the fee amount that they pay under Scenario 2 is almost the same as they will pay when they move from the SEPP sector to the Industrial Sector upon repower or compliance with the OTC Policy.

Raising fees is a difficult task and one that should have fairness and certainty at the core of it. Viewed under the lens of the Sector Approach based on the Matrix created by the SWRCB, the other sectors have enjoyed a subsidy from the SEPPs for a long time. Indeed, in the 2008-2009 fee cycle, their fees were greatly reduced while the SEPPs were dramatically increased. When the SEPPs fees were increased in 2008-2009, the impact to the three (3) AES-SL facilities was an increase from $300,000 to $1,625,584.80.

While the NPDES program revenue requirements have increased from $12.3 million in 2007-2008 to $21 million in 2011-2012, many NPDES permit holders are still not paying the amount they paid in 2007-2008 prior to all of the fees structure changes. Additionally, many participants, including the Industrial Minors have experienced no increases to their fees and still pay the de minimis $1,000 per year. While Scenario 3 and 4 stated intent is to protect the smaller permit holder, the chart below highlights with actual permit holder fees that this indeed is not the case and only furthers the inequities and subsidies to Industrial Majors.

Permit Holder	2007-08 fees	2008-09	2009-11	Scenario 1	Scenario 2	Scenario 3	Scenario 4
SEPP	$100,000	$707,822.80	$250,000	$349,000	$62,200	$265,000	$279,000
Ind Minor	$1,000	$1,000	$1,000	$1,395	$2,201	$2,897	$2,176
Ind Major	$28,647	$18,039	$22,542	$25,521	32,200	$12,814	$12,684
Muni Minor	$1,000	$1,000	$1,000	$1,395	$2,674	$2,897	$2,176
Muni Major	$50,000	$16,704	$51,388	$71,691	$78,256	$79,285	$83,116
General Cat 1	$4,800	$5760	$5,760	$8,036	$10,696	$10,696	$10,696
General Cat 2	$2,900	$3,480	$3,480	$4,855	$6,462	$6,462	$5,658
General Cat 3	$1,000	$1,200	$1,200	$1,674	$2,228	$2,228	$1,674

Further, once Scenario 2 is adopted, the only changes in the foreseeable future to the program are based upon revenue targets which will result in minor fee changes for each permit holder going forward. There will not be a need to dramatically alter the structure as there won't be gaping budget holes as each SEPP is modified in compliance with the OTC Policy. Scenario 2 does allow for modifications within each sector whereby the members can choose to allocate amongst themselves and further reduce the fees of the smaller permit holders by having the larger pay more or vice versa.

In conclusion, AES-SL respectfully recommends that the SWRCB Board adopt Scenario 2 for the 2011-2012 NPDES Fee Structure. It will give all permit holders the fairness and certainty that is necessary to maintain the fee structure from year to year without wildly swinging permit fees.

AES-SL appreciates the opportunity to provide these comments and recommendations in advance of the July 6th Board Workshop. Please do not hesitate to contact me at (916) 509-

0598 with any questions. I will also be in attendance at the July 6th Board Workshop and look forward to the opportunity to hear from the SWRCB Board about the NPDES Fee Structure Proposals.

Kindest regards,

Julie K. Gill

Julie K. Gill
Director of Regulatory & Government Affairs
AES Southland